AMERICAN RY. EXPRESS CO. *v.* DOWNING.

March 16, 1922.

[111 S. E. 265.]

1. Corporations (§ 590 (3)*)—Corporation Taking Over All Tangible Property of Another Liable for Its Debts.—A corporation which took over the entire business of another corporation as a going concern and all of the tangible property of the latter theretofore used in its business, paying therefor only in capital stock, must pay any existing liabilities of the corporation taken over of which it had actual or constructive knowledge, at least to the extent of the property acquired.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 570.]

2. Corporations (§ 591*)—Creditor of Constituent Corporation May Sue at Law Consolidated Corporation under Implied Promise to Pay.—Where the law implies a promise on the part of a consolidated corporation to pay the liabilities of the constituent companies, the situation is precisely the same in principle as if such promise were an express promise, and creditors of the constituent companies may recover on it by action at law against the promisor.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 570.]

3. Corporation (§ 590 (3)*)—Merging Corporation Liable to Creditors, though It Does Not Receive All of Property of Merged Corporation.—It is not essential to the existence of liability of a merging corporation for obligations of the merged corporation that the former should have received all of the property of the merged corporation, being liable to the extent of the property received; and the quality of the property transferred, as compared with that retained, is material only on question whether remedy of creditors is substantially unimpaired.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 570.]

4. Corporations (§ 590 (3)*)—Merged Corporation Need Not Cease to Exist to Make Merging Corporation Liable to Creditors.—It is not essential to a merging corporation being considered as a consolidated company, nor to its liability to creditors of the merged corporation, that the merged corporation should cease to exist de jure; it being sufficient that it ceases the actual transaction of business as a going concern, and it may continue in existence for the purpose of winding up its affairs.

[Ed. Note.—For other cases, see 3 Va.-W. Va. Enc. Dig. 570.]

5. Carriers (§ 134*)—Finding of Delivery of Shipment to Carrier Sustained.—In action against express company for value of part of shipment lost, evidence held sufficient to support a finding that the shipment was delivered to defendant's predecessor.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 717.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Error to Circuit Court, Accomac County.

Action by J. W. Downing against the American Railway Express Company. Judgment for plaintiff, and defendant brings error. Affirmed.

Stewart K. Powell, of Onancock, for plaintiff in error.

S. James Turlington, of Accomac, for defendant in error.

FOY *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 270.]

1 Criminal Law (§ 1120 (3)*)—Sustaining Objection to Question Not Reviewed Where Expected Answer Does Not Appear.—Refusal to allow a witness to answer the question, "What is your religious faith?" will not be considered on appeal, unless the record shows what answer was expected, though defendant claims that his object was to show that the witness was not properly sworn.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 597.]

2. Criminal Law (§ 261 (1)*)—Arraignment or Plea Not Necessary in Misdemeanor Cases.—Under Code 1919, § 4889, no arraignment or plea of the accused is necessary in a misdemeanor case.

[Ed. Note.—For other cases, see 4 Va.-W. Va. Enc. Dig. 37.]

Error to Hustings Court of Portsmouth.

O. V. Foy was convicted of violation of the prohibition law, and he brings error. Affirmed.

The accused was tried by jury, convicted of violating the prohibition law of the state, and the judgment under review was entered accordingly.

There are but two assignments of error.

Frank L. Wilson, of Portsmouth, for plaintiff in error.

John R. Saunders, Atty. Gen., J. D. Hank, Jr., Asst. Atty. Gen., and *Leon M. Bazile, Second Asst. Atty. Gen.,* fo the Commonwealth.

RUDD *v.* COMMONWEALTH.

March 16, 1922.

[111 S. E. 270.]

1. Criminal Law (§ 914*)—Denial of New Trial for Refusal to Change Venue on Ground that Impartial Jury Could Not Be Obtained Not Error, Where Impartial Jury Was in Fact Obtained.—Denial of motion for new trial for refusal to change venue, under Code 1919, § 4663, on the ground that a fair and impartial jury could not be obtained, held not error, where an impartial jury was in fact obtained.

[Ed. Note.—For other cases, see 2 Va. W. Va. Enc. Dig. 783.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.